

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.1519 of 2025

**KAMALESH MANDAL
VS.
STATE OF WEST BENGAL & ANR.**

**For the Petitioner : Mr. Pawan Kumar Gupta, Adv.,
Mr. Nikhil Kumar Gupta, Adv.,
Ms. Sofia Nesar, Adv.,
Mr. Santanu Sett, Adv.**

**For the State : Mr. Arijit Ganguly, Adv.,
Ms. Debadrita Mondal, Adv.**

**For the O.P. No.2 : Mr. Tanmay Chowdhury, Adv.,
Mr. Sk. Md. Masur, Adv.**

Last heard on : 28-11-2025.

Judgement on : 28-11-2025.

Uploaded on : 02.12.2025.

CHAITALI CHATTERJEE (DAS), J. :-

1. This present revisional application has been filed for setting aside the order 26th July, 2024 against an order dated 19th August, 2024 whereby the learned court below passed an order by rejecting the petitioner's application for discharge.
2. It is the case of the petitioner that the opposite party no. 2 had approached the petitioner from the advertisement published by the petitioner for the proposal of marriage and thereafter the petitioner and the opposite party no. 2 tied the knot on 22-03-2015 and after such marriage, the petitioner herein and his wife, that is, the opposite party no.2 herein, started residing at the petitioner's residence. It is further stated by the petitioner that before his marriage with the opposite party no.2, he was previously married to one Karabi Mandal, but due to unfortunate turn of event, said Karabi Mandal died on 21-02-2014 in a road accident and from such wedlock, one girl child was born on 14th July, 2006. Thereafter, for the sake of healthy upbringing of minor daughter, the petitioner decided to marry for the second time and for that purpose, he made a newspaper publication on 19th October, 2014 seeking a suitable bride for the marriage. The only condition of marriage put forward by the petitioner is that for his minor daughter's interest, the bride must be infertile, that is, incapable of having a child. Thus on the basis of the said publication, the family members of the opposite party no.2 contacted the petitioner for marriage as the opposite party no. 2 was unable to have children due to her infertility which fitted into the condition of the petitioner. Subsequently, the petitioner and the opposite party no. 2 tied with the marital knot on 22nd March, 2015.

- 3.** It is the further case of the petitioner that he then discovered that the opposite party no. 2 is not only incapable of having a child, but she is also incapable of indulging into physical intimacy with the petitioner. The petitioner thereafter took the opposite party no. 2 to a gynecologist on 12th December, 2015 for her treatment where the petitioner came to know that the opposite party no.2 is incapable of indulging in physical relationship and the prescription of the doctor clearly states that there is absence of vaginal canal. Thereafter, certain disputes developed between the parties and the opposite party no.2, without any intimation, left the matrimonial home in the year 2016 keeping the petitioner in dark and started living at her paternal home with her parents and brother. It is further submitted that since such diagnosis, the opposite party no. 2 started neglecting the minor daughter of the petitioner and used to treat her very badly.
- 4.** The petitioner immediately thereafter made a written statement before Sonarpur Police Station intimating the police authority regarding such incident and the same was registered as GDE No.2478 dated 26-01-2016. The petitioner states that 6 years thereafter, the opposite party no.2 made a false and frivolous written complaint against the petitioner before Gobardanga Police Station which was registered as Gobardanga P.S. Case No.315 of 2022 dated 14-11-2022 under Section 498A of the IPC wherein it was stated that the petitioner along with his family members habitually mentally and physically abused her on the ground of her incapacity to have a child and subsequently drove her out of her matrimonial house.

5. On the basis of such complaint, investigation started and charge sheet has been submitted with a charge under Section 498A of the IPC which is pending for trial before the learned Chief Judicial Magistrate, Barasat. A notice was issued against the petitioner under Section 41A of the Code of Criminal Procedure and he surrendered before the learned Court of Chief Judicial Magistrate and was subsequently, released on bail.
6. It is the specific contention of the learned advocate representing the petitioner that the petitioner has been falsely implicated in the present proceeding and there exists no ingredient to establish the provision of Section 498A of the IPC. It is further submitted that the opposite party no.2 left the matrimonial home voluntarily and the petitioner tried to live with the opposite party no.2 at her parental house, but the present case has been filed falsely implicating him alleging demand of dowry by the present petitioner and his parental members when the opposite party no. 2 was staying at her matrimonial home. It is submitted by the learned advocate for the petitioner that the opposite party no. 2 left her matrimonial home in the year 2016 and the present false and frivolous complaint was lodged in the year 2022, after a long gap of six years.
7. Learned Advocate further submits that thereafter, a petition for discharge was filed by the present petitioner and the learned Judge considering the argument advanced, refused to entertain such application on the ground that there is sufficient material against the present petitioner on the basis of a decision in the case of the ***State of Gujarat Vs. Dilipsinh Kishorsinh Rao (Criminal Appeal No.2504 of 2023)***. It was further observed by the learned court that

this issue has to be thrashed out during the course of the trial and at the stage of framing the charge, mini trial cannot be held.

8. Learned Advocate representing the opposite party no. 2 categorically submitted that sufficient ingredient exists in the written complaint itself which prima facie shows that the issue is to be decided only after taking evidence in course of trial and certainly, it cannot be decided at the threshold. Therefore, it is submitted that the order was passed rightly.
9. Learned State advocate also raises objection regarding the contention made by the petitioner.
10. Having heard the learned advocates for the parties and going through the materials on record, especially the complaint lodged by the present opposite party no. 2, it appears that the complaint has been lodged in the year 2022 and the marriage is of 2014. The case of the petitioner pertains to demand of dowry since after marriage, by the petitioner and his family members and abusing her physically. However, she endured everything in order to maintain a happy conjugal life but on 23rd January, 2016, she was compelled to sign on some blank paper and thereafter she was driven out. It further transpires that the petitioner herein filed one matrimonial suit being 2947 of 2016 which was decreed ex parte and the marriage was declared null and void on the ground of non-consummation of Hindu Marriage Act. The order passed by the learned court transpires further that the opposite party No 2 did not appear or took steps on 6/7 times when the matter was fixed for ex parte hearing and considering the evidence adduced by the petitioner, decree of divorce was

passed. It is submitted by the learned advocate for the opposite party no.2 that an application is pending for recalling of such ex parte order however the specific details of the same is not furnished.

11. The question arose whether the allegation contained in the FIR warrant quashing of the proceeding having regard to the facts and circumstances of the case. A dispute has been raised by the learned advocate of the petitioner regarding the maintainability of this petition and it is assailed that against a specific order the petitioner has come before this court and hence cannot prayed for quashing the entire proceeding. In this case regarding the prayer made by the petitioner whereby specific order refusing to entertain the allegation is under challenge and in the prayer portion, it is mentioned that to set aside the order and to quash the charge sheet and the petitioner has prayed for quashing of the entire proceeding.

12. It is now settled by judicial pronouncement, it was held that Section 498A cannot be applied mechanically and it is further observed that the domestic relationship is guided on the basis of emotion and social values and, therefore, it is considered as sacred and to preserve the families, the court must be circumspect judiciously and allow invocation of criminal process only when there is specific allegation which constitutes criminal offence.

13. Therefore, it is presumed that merely on the basis of general allegation of harassment without pointing out the specific allegation against such perpetrator would not suffice to continue with the said process. In this case the decree of divorce was granted on the ground of nullity is passed ex-parte

and the order sheet manifests that despite several opportunities the opposite party wife, did not turn up as a result the ex parte decree was passed. As of date, the decree is subsisting and the application has been filed for recalling of such ex parte decree.

- 14.** In the application under Section 239 Cr.P.C., the reasons were assigned why such application was filed. The various statements recorded under Section 161 Cr.P.C. were handed over to the petitioner under Section 207 Cr.P.C. and on perusal of the copies of the charge sheet; the said application was taken out. But the learned trial Court was of the view that such issue cannot be decided at the threshold of the trial and it is to be decided only in course of trial. It is undisputed that in view of the decision of the Hon'ble Supreme Court in catena of decisions where it is repeatedly held and observed that to constitute an offence under Section 498A IPC, it must be done to cause grave injury. In the complaint when no whisper can be found of a willful conduct of apparent harassment of the complainant beforehand with regard to unlawful demand by them so as to attract the provisions of Section 498A IPC, the contents of the complaint is to be established. It can be found from the instances that such abuse and such specific allegations are missing in the written complaint. It is pertinent to mention at the cost of repetition that the marriage is of 2014 and the complaint had been lodged in the year 2022 when admittedly she left the matrimonial house either voluntarily or forcibly in the year 2016 and no such explanation has been

mentioned as to why such delay occurred in filing the said written complaint.

15. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court can exercise the power under Section 482 Cr.pc.

16. In the decision of ***Mange Ram vs State of Madhya Pradesh*** reported in¹ the definition of cruelty under section 498A IPC was discussed and it is as follows ,

‘Section 498A of the IPC prescribes punishment where a woman is subjected to cruelty by her husband or his relatives. The offence is punishable with imprisonment for a term which may extend to three years and also provides for fine. The Explanation appended to the provision defines "cruelty" in two parts. Clause (a) refers to wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, whether mental or physical. Clause (b) expands the scope of the term to include harassment with a view to coercing the woman or her relatives to meet any unlawful demand for property or valuable security, or on

¹ INSC 2025 962

account of failure to meet such demand”.

In the case of **Archin Gupta v. State of Haryana**², the Supreme Court held that Section 498A IPC should not be applied mechanically. The Court further observed that minor marital issues were often exaggerated by the wife’s family which lead to misuse of police machinery to harass the husband. In the case of **Digambar v. State of Maharashtra**³, the Court stated that “Cruelty is not enough to constitute an offense under S. 498-A IPC, it must be done to cause grave injury or drive the victim to commit suicide or inflict grave injury to herself.” In this case the narrative of the de-facto complainant admitted the contention of the petitioner that the marriage took place in the year 2014 on the basis of an advertisement in the newspaper where specific condition stipulated that the lady must be incapable to conceive and hence to tease her for that reason and then started demanding money as alleged against the petitioner/husband seems to be improbable. She alleges to be driven out from her matrimonial house in the year 2016 but admittedly she was not residing at her matrimonial house .She received the notice of the divorce suit filed by the husband but admittedly did not raise any objection after that and only after she came to learn about his further marriage she lodged the complaint in the year 2022. No other explanation as to why she did not take any action for long 4 years despite she was driven out her from her matrimonial house. Therefore the petitioner even if entered into marriage with another lady he has

² (2025) 3 SCC 756

³ 2024 SCC online SC 3836

done lawfully after obtaining the decree of divorce. The entire allegations are omnibus in nature without giving any details about the torture.

17. Therefore, after taking into account the facts and circumstances of the case and considering the decisions and observations of the Hon'ble Supreme Court, this Court is of the view that there is no such material for which the proceeding should be allowed to continue and the decision and the order of the learned court to entertain the discharge application and the reasons therein, are not sufficient and the learned court despite having the entire materials before him did not consider the lack of materials to frame the charge under section 498A IPC and refused the prayer for discharge . Hence, the instant revisional application stands allowed. The order refusing to discharge the petitioner is set aside. The petitioner is hereby discharged from the charge under Section 498A of the IPC. The entire proceeding, accordingly, stands quashed.

18. With the above observations, the revisional application is disposed of.

19. The Case Diary is returned herewith.

20. All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]